



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
GARTH H. DRABINSKY
MYRON I. GOTTLIEB
GORDON ECKSTEIN**

**ORDER
(Sections 127 and 127.1)**

WHEREAS on February 20, 2013, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing in relation to an Amended Statement of Allegations issued by Staff of the Commission (“Staff”) regarding Garth H. Drabinsky, Myron I. Gottlieb and Gordon Eckstein (collectively, the “Respondents”);

AND WHEREAS the Notice of Hearing stated that an initial hearing before the Commission would be held on March 19, 2013;

AND WHEREAS on March 19, 2013, the Commission convened a hearing and ordered that the matter be adjourned to a confidential pre-hearing conference on May 23, 2013;

AND WHEREAS on May 23, 2013, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for each of the Respondents attended;

AND WHEREAS counsel for Drabinsky requested that a motion be scheduled respecting certain portions of Staff’s Statement of Allegations (the “Motion”) and a date for the motion was scheduled for July 10, 2013;

AND WHEREAS on July 2, 2013, counsel for Drabinsky communicated to the Commission that he would no longer be proceeding with the Motion;

AND WHEREAS on July 3, 2013, the Commission ordered that the July 10, 2013 Motion date be vacated;

AND WHEREAS on September 8, 2014, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for each of the Respondents attended;

AND WHEREAS on September 8, 2014, the Commission ordered that:

1. A further confidential pre-hearing conference shall take place on December 2, 2014 at 3:00 p.m., or on such other date as may be ordered by the Commission;
2. A hearing shall commence on June 22, 2015 and continue on the following dates in June 2015: 23-26, 29-30, or on such other dates as may be ordered by the Commission;
3. Parties shall disclose any expert evidence according to the following schedule:
 - a. Respondents shall identify any expert witness that they intend call and the subject of their testimony by March 9, 2015;
 - b. Respondents shall serve any expert report(s) on Staff by April 8, 2015;
 - c. Staff shall serve any expert response report(s) on the Respondents by May 8, 2015; and
 - d. Respondents shall serve any expert reply report(s) on Staff by May 25, 2015;
4. Parties shall disclose witness lists and witness summaries by May 4, 2015; and
5. Parties shall serve and file hearing briefs by June 1, 2015;

AND WHEREAS on September 9, 2014, the Commission approved the settlement agreement reached between Staff and Gottlieb;

AND WHEREAS on December 2, 2014, a confidential pre-hearing conference was held, at which counsel for Staff, counsel for Drabinsky and counsel for Eckstein attended;

AND WHEREAS all parties agreed to adjourn the matter to a further confidential pre-hearing conference to be held at a later-scheduled date;

AND WHEREAS on April 7, 2015, a confidential pre-hearing conference was commenced, at which counsel for each of Staff, Drabinsky and Eckstein attended;

AND WHEREAS the confidential pre-hearing conference was continued on April 23 and May 6, 2015, and counsel for each of Staff and Drabinsky attended;

AND WHEREAS Drabinsky requested that the hearing scheduled in this matter be adjourned;

AND WHEREAS by Order dated May 22, 2015, the Commission approved the Settlement Agreement between Staff and Eckstein dated April 20, 2015;

AND WHEREAS on May 25, 2015, the Commission ordered that:

1. The hearing dates scheduled for June 22 to June 26, 2015 and June 29 to June 30, 2015 are vacated;
2. The hearing in this matter shall commence at 10:00 a.m. on January 21, 2016 and continue on January 22, January 25 to 29, 2016 and on February 19, 2016, or at such other time or times and on such other dates as may be ordered by the Commission;
3. A further confidential pre-hearing conference shall take place at 2:00 p.m. on September 24, 2015 or at such other time and on such other date as may be ordered by the Commission;
4. The parties shall disclose expert and/or industry practice evidence according to the following schedule:
 - a. The parties shall identify the expert and/or industry practice witnesses they intend to call and the subject matter of their testimony by no later than 105 days prior to the commencement of the hearing;
 - b. Each of the parties shall serve his or its expert report(s) on the other parties by no later than 75 days prior to the commencement of the hearing;
 - c. Each of the parties shall serve his or its response report(s) on the other parties by no later than 45 days prior to the commencement of the hearing; and
 - d. Each of the parties shall serve his or its reply report(s) on the other parties by no later than 30 days prior to the commencement of the hearing;
5. Each of the parties shall disclose his or its initial witness lists and witness summaries by no later than 60 days prior to the commencement of the hearing; and
6. Each of the parties shall serve his or its hearing brief materials by no later than 20 days prior to the commencement of the hearing;

AND WHEREAS on September 24, 2015, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for Drabinsky attended;

AND WHEREAS at the confidential pre-hearing conference held on September 24, 2015, Drabinsky requested that the hearing scheduled in this matter be adjourned to a later date;

AND WHEREAS on September 29, 2015, the Commission ordered that:

1. The hearing dates scheduled for January 21 to January 22, January 25 to 29, and February 19, 2016 are vacated;
2. The hearing in this matter shall commence at 10:00 a.m. on June 20, 2016 and continue on June 21, June 24 to June 28, 2016 and July 19, 2016 or at such other time or times and on such other dates as may be ordered by the Commission;
3. A further confidential pre-hearing conference shall take place at 10:00 a.m. on February 22, 2016 or at such other time and on such other date as may be ordered by the Commission;
4. The parties shall disclose expert and/or industry practice evidence according to the following schedule:
 - a. The parties shall identify the expert and/or industry practice witnesses they intend to call and the subject matter of their testimony by no later than 105 days prior to the commencement of the hearing;
 - b. Each of the parties shall serve his or its expert report(s) on the other parties by no later than 75 days prior to the commencement of the hearing;
 - c. Each of the parties shall serve his or its response report(s) on the other parties by no later than 45 days prior to the commencement of the hearing; and
 - d. Each of the parties shall serve his or its reply report(s) on the other parties by no later than 30 days prior to the commencement of the hearing;
5. Each of the parties shall disclose his or its initial witness lists and witness summaries by no later than 60 days prior to the commencement of the hearing; and
6. Each of the parties shall serve his or its hearing brief materials by no later than 20 days prior to the commencement of the hearing.

AND WHEREAS on February 22, 2016, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for Drabinsky attended;

AND WHEREAS at the confidential pre-hearing conference held on February 22, 2016, Drabinsky again requested that the hearing scheduled in this matter be adjourned to a later date;

AND WHEREAS on February 22, 2016, the Commission ordered that:

1. The hearing dates scheduled for June 20, June 21, June 24 to June 28, 2016 and July 19, 2016 are vacated;
2. The hearing in this matter shall commence at 10:00 a.m. on September 19, 2016 and continue on September 21 and 22, September 26 and 29, 2016 and October 19, 2016 or at such other time or times and on such other dates as may be ordered by the Commission;
3. A further confidential pre-hearing conference shall take place at 10:00 a.m. on June 20, 2016 or at such other time and on such other date as may be ordered by the Commission;
4. The parties shall disclose expert and/or industry practice evidence according to the following schedule:
 - a. The parties shall identify the expert and/or industry practice witnesses they intend to call and the subject matter of their testimony by no later than 105 days prior to the commencement of the hearing;
 - b. Each of the parties shall serve his or its expert report(s) on the other parties by no later than 75 days prior to the commencement of the hearing;
 - c. Each of the parties shall serve his or its response report(s) on the other parties by no later than 45 days prior to the commencement of the hearing; and
 - d. Each of the parties shall serve his or its reply report(s) on the other parties by no later than 30 days prior to the commencement of the hearing;
5. Each of the parties shall disclose his or its initial witness lists and witness summaries by no later than 60 days prior to the commencement of the hearing; and
6. Each of the parties shall serve his or its hearing brief materials by no later than 20 days prior to the commencement of the hearing.

AND WHEREAS Staff requested, on consent, that the pre-hearing conference scheduled to take place at 10:00 a.m. on June 20, 2016 be rescheduled to 11:00 a.m. on June 27, 2016;

AND WHEREAS on June 27, 2016, a confidential pre-hearing conference was held, at which Staff and counsel for Drabinsky attended;

AND WHEREAS at the confidential pre-hearing conference held on June 27, 2016, Drabinsky again requested that the hearing scheduled in this matter be adjourned to a later date;

AND WHEREAS Drabinsky continues to be subject to an interim undertaking made to the Director of Enforcement of the Commission (the “Director”) providing that, pending the conclusion of the Commission proceeding, he will not apply to become a registrant or an employee of a registrant or an officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission releasing him from the undertaking;

AND WHEREAS Drabinsky continued to be subject to parole terms in effect until September 2016 (the “Parole Terms”) which prohibited him from owning or operating a business or being in a position of responsibility for the management of finances or investments of any other individual, charity, business or institution, among other things;

AND WHEREAS upon expiry of the Parole Terms, and as a condition of the adjournment sought on June 27, 2016, Drabinsky agreed to the following terms until the conclusion of the Commission proceeding:

1. He will not own or operate a business; and
2. He will not be in a position that would entail the management, control or administration of finances or investments of any other individual, charity, business or institution;

AND WHEREAS on June 27, 2016, the Commission ordered that:

1. The hearing dates scheduled for September 19, 21, 22, 26 and 29, 2016 and October 19, 2016 are vacated;

2. The hearing in this matter shall commence at 10:00 a.m. on February 22, 2017 and continue on February 23, 24, 27 and 28, 2017 and March 10, 2017, each day commencing at 10:00 a.m., or at such other time or times and on such other dates as may be ordered by the Commission;
3. A further confidential pre-hearing conference shall take place at 10:00 a.m. on November 22, 2016 or at such other time and on such other date as may be ordered by the Commission;
4. The parties shall disclose expert and/or industry practice evidence according to the following schedule:
 - a. The parties shall identify the expert and/or industry practice witnesses they intend to call and the subject matter of their testimony by no later than 105 days prior to the commencement of the hearing;
 - b. Each of the parties shall serve his or its expert report(s) on the other parties by no later than 75 days prior to the commencement of the hearing;
 - c. Each of the parties shall serve his or its response report(s) on the other parties by no later than 45 days prior to the commencement of the hearing; and
 - d. Each of the parties shall serve his or its reply report(s) on the other parties by no later than 30 days prior to the commencement of the hearing;
5. Each of the parties shall disclose his or its initial witness lists and witness summaries by no later than 60 days prior to the commencement of the hearing; and
6. Each of the parties shall serve his or its hearing brief materials by no later than 20 days prior to the commencement of the hearing.

AND WHEREAS on November 22, 2016, a confidential pre-hearing conference was held, at which Staff and counsel for Drabinsky attended;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that:

A confidential pre-hearing conference shall take place at 8:30 a.m. on January 10, 2017 or at such other time and on such other date as may be ordered by the Commission.

Dated at Toronto this 22nd day of November, 2016.

“Christopher Portner”

Christopher Portner